IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

SECOND APPEAL NO.584 OF 1998

1. Nijaroddin Aminoddin Peerjade
(since deceased through L.Rs.)
a.Maimunissa Nazaruddin Pirjade
b.Jamirabegum Amir Patel
c.Jahurpasha Nazaruddia Pirjade
d.Jafarpasha Nazaruddin Pirjade
e.Aliabegum M. Rafiq Maroof.

2. Nijamuddin Aminoddin Peerjade ...Appellants

Vs.

1. Shivpad Babu Erandole
(since deceased by his L.Rs.)
1A.Dr.Vijay Shivpad Erandole
1B Rajendra Shivpad Erandole
1C.Mangala Shivshankarayappa
1D.Sushilabai @ Krishnabai Shivpad Eradole

2.Shivputra Babu Erandole
3. Sidappa Babu Erandole
4.Sonubai Tammanna Vantamore
5.Sou.Kashibai Shankarappa Kesti
(since deceased by her L.Rs.)
5A Shankarappa Shrishailappa Kesti
5B Baby @ Gangutai Kesti
6. Sou.Shantabai Subhas Tayade
7. Shankutalabai Sunmukhappa Savadekar
8. Sitabai @ Leelabai Appasaheb Sagare
9. Sayyadmohamad Nijamuddin Kazi
10.Smt.Amina Amin Desai
11.Bilkis Daepir Peerjade
12.Mohamadgous Nijamuddin Kazi
13.Mohamadgous Nijamuddin Kazi
14.Shajadbi Kutubuddin Peerjade
15.Mohadhanif Aminoddin Peerjade
16.Shajadbi Mohamadhanif Peerjade
17.Sahebpir Mohamadjin Peerjade
18.Maherpasha Mohamadhanif Peerjade
19.Mahamadpasha Mahamadajim Peerjade
20.Sahebpasha Mohamadjim Peerjade
21.Chandbi Nabisaheb @ Babu Maurpharavari
22.Dnyanchandra Appaji Shete
(since deceased by his L.Rs.)
22A Sou.Vimal Dnyanchandra Shete
22B Rajendra Dnyanchandra Shete

22C Trishila Dnyanchandra Shete
23. Parvatibai Girmalayya Swami
24. Shivputra Girmalayya Swami
25. Ashok Girmalayya Swami ...Respondents

The Second Appeal is dismissed as against Respondent Nos.1, 1A, 1B, 1C, 1D, 6, 11 vide Court's Order dated 15-3-2002.

The Second Appeal is dismissed as against Respondent Nos.8,15, and 23 vide Court's Order dated 26-4-1999.

with

SECOND APPEAL NO.585 OF 1998

1.Nazaruddin Aminoddin Pirjade
(since deceased through L.Rs.)
1a. Maimunissa Nazaruddin Pirjade
1b. Jamirabegum Amir Patel
1c. Jahurpasha Nazaruddin Pirjade
1d. Jafarpasha Nazaruddin Pirjade
1e. Aliabegum M. Rafiq Maroof

2. Nijamoddin Aminoddin Pirjade ...Appellants

Vs.

Smt.Sonubai Tammanna Vantamure
(since deceased through L.Rs.)

Dr.Allappa Tammanna Vantamure ...Respondent

Mr.S.M.Oak for the Appellants
Mr.R.G.Ketkar for the Respondent Nos.5A, 5B, 2 to 4, 6,7,9,10, 12 and 13 in Second Appeal No.584 of 1998 and for Respondent No.2 in Second Appeal No.585 of 1998

CORAM: A.S.OKA, J.
DATED: FEBRUARY 16,2005.

ORAL JUDGMENT:

1. These Second Appeals arise out of common Judgment and Decree passed by the Appellate Court and therefore I am disposing of the two Appeals by a common Judgment.

2. The Appellants in both the Appeals are original Plaintiffs. One Mr.Aminoddin, the father of the original

Plaintiffs executed a deed of possessory mortgage dated 30th November 1938 in favour of one Girmallya Kallya Swami for a period of 36 years for a sum of Rs.800/-. The said Aminoddin had six annas share in the suit property which was subject matter of the said mortgage. The remaining ten annas share was held by one Sahebbi who also executed a deed of possessory mortgage on 9th September 1939 in favour of the said Girmallya Kallya Swami. On 11th December 1944 the said Girmallya Kallya Swami assigned the mortgage to one Babu Sidappa Erandole. On 19th February 1946 the said Aminoddin and his son sold the equity of redemption of their land in favour of one Sonubai. It is alleged that on 19th July 1946 there was a compromise decree in a partition suit filed by Babu to which Sonubai was a party. The case is that by the compromise decree, Sonubai relinquished her right of equity of redemption in favour of Babu.

3. The Appellants filed a Regular Civil Suit No.193 of 1985 against the Respondents in Second Appeal No.584 of 1998 inter alia for redemption of mortgage executed on 30th November 1938. The said suit was contested by all the Respondents including Sonubai who was the Defendant no.7 therein. The Defendant Nos.4,5,6,8,9 to 11 filed a joint written statement on 9th June 1986 placing reliance on registered document dated 19th February 1946 executed by Aminoddin in favour of Sonubai. A reliance was also placed on the compromise decree passed on 19th July 1946 to which Sonubai was a party.

Sonubai also filed her written statement opposing the claim of the Appellants. Thus, in the year 1986 itself the Appellants were aware about the execution of document dated 19th February 1946 by Aminoddin and his sons-Appellants in favour of Sonubai by which equity of redemption is transferred in favour of Sonubai. In the year 1988, the Appellants filed R.C.S. No. 63 of 1988 by impleading only said Sonubai as party Defendant in which a prayer was made that the document dated 19th February 1946 executed in favour of Sonubai was bogus and sham document and the said Sonubai should be restrained from acting upon the said document. The said Sonubai who was the sole Defendant in the suit filed a written statement and contended that she had no right, title or interest in the suit property.

4. The Trial Court decreed both the suits. The Appellate Court has set aside the decrees passed by the Trial Court and both the suits have been dismissed.

5. Second Appeal No.585 of 1998 arises out of R.C.S. No.63 of 1988 filed by the Appellants against Sonubai and the Second Appeal No.584 of 1988 arises out of suit for redemption i.e.Regular Civil Suit No.193 of 1985 filed by the Appellants. The learned Counsel for the Appellants submitted that the trial Court passed a decree against the said Sonubai in R.C.S.No.63 of 1988 as the suit was not contested by the said Sonubai. He submitted that the case of the Respondents

was that the decree was obtained by the Appellants by practising fraud. He submitted that there was no Affidavit in support of Memorandum of Appeal filed by the said Sonubai that the decree was obtained by fraud and misrepresentation. He further submitted that the compromise relied upon by the Respondents which was effected on 19th July 1946 is not clear and from the compromise decree it does not appear that Sonubai relinquished her right, title or interest in the suit land in favour of Babu. He submitted that the decree passed against Sonubai in Regular Civil Suit No.63 of 1988 could not have been set aside as there was no contest in the said suit. He submitted that material averments in the plaint were not denied by the said Sonubai in the Trial Court.

6. Shri Ketkar appearing for some of the Respondents in the Second Appeal No.584 of 1988 as well as for Respondent No.2 in Second Appeal No.585 of 1988 has invited my attention to the pleadings and various documents on record and has supported the impugned Judgments and Decrees.

7. I have considered the rival submissions. Even assuming that Sonubai admitted the claim of the Appellants in R.C.S.No.63 of 1998, the said admission was of no consequence as even according to the said Sonubai she had relinquished her right, title or interest acquired by her on the basis of document dated 19th February 1946 by a compromise executed on 19th July 1946 in a partition suit filed by Babu Erandole.

Therefore, assuming that there was any admission by Sonubai, it was obvious that the admission was of a person having no interest in the suit property. As stated earlier, in the suit No.193 of 1985 filed by the Appellants for redemption of mortgage, in the year 1986 itself written statement was filed by the contesting Defendants placing reliance on the compromise dated 19th July 1946. Though the Appellants were made aware about the subsequent compromise and right, title or interests claimed by other Respondents on the basis of the said compromise, in the year 1988, the Appellants chose to file a suit only against Sonubai without impleading persons claiming through Babu. After written statement of Sonubai is perused, it is very clear that all that she has stated is that she has no concern with the property. In this view of the matter no fault can be found with the Appellate Court if the decree passed in R.C.S.No.63 of 1998 was set aside and the suit was dismissed.

8. In view of document dated 19th February 1946 by which the said Aminoddin and his sons sold equity of redemption to the said Sonubai, the Appellants cannot claim that they have right to redeem the mortgage. The learned Counsel placed reliance on Section 60 of the Transfer of Property Act, 1882 and in particular its proviso. In my view the proviso will not help the Appellants as the case is that by document dated 19th February 1946 equity of redemption was transferred in favour of Sonubai. Once it is held that the document dated

19th February 1946 is valid and subsisting, it is obvious that the suit for redemption by the Appellants was not maintainable. Therefore, the decree for redemption passed by the Trial Court has been set aside.

9. In view of what is stated above, no substantial question of law arises. Second Appeals are dismissed with no order as to costs.

Judge.